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April 12, 2017

Lilian S. Dorka, Director  
External Civil Rights Compliance Office  
Office of General Counsel  
USEPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Ave., N.W.  
Mail Code: 1201A  
Washington, DC 20460

Re: EPA File Nos. 44RNO-16-R9 (HDOA) and 45RNO-16-R9

Dear Director Dorka:

Enclosed please find a copy of the "State of Hawai'i Department of Agriculture's Response to the Environmental Protection Agency, External Civil Rights Compliance Office Decision to Initiate Investigation into Allegations of Discriminatory Acts" and Exhibits "A" to "G". These documents were emailed in PDF format to [dorka.lilian@epa.gov](mailto:dorka.lilian@epa.gov) and [martinez.brittany@epa.gov](mailto:martinez.brittany@epa.gov) on April 12, 2017 at 11:30 A.M. Hawai'i time.

Should you require any additional information, please feel free to contact me at (808) 586-1180 or via email at [delanie.d.prescott-tate@hawaii.gov](mailto:delanie.d.prescott-tate@hawaii.gov).

Sincerely yours,

*Delanie D. Prescott-Tate*

Delanie D. Prescott-Tate  
Deputy Attorney General

cc: file

APR 18 2017

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EARTHJUSTICE on behalf of	)	EPA FILE NO. 44RNO-16-R9 (HDOA)
MOMS ON A MISSION HUI, and	)	
PŌ'AI WAI OLA/WEST KAUA'I	)	STATE OF HAWAI'I DEPARTMENT OF
WATERSHED ALLIANCE,	)	AGRICULTURE'S RESPONSE TO THE
	)	ENVIRONMENTAL PROTECTION
Petitioners,	)	AGENCY, EXTERNAL CIVIL RIGHTS
vs.	)	COMPLIANCE OFFICE DECISION TO
	)	INITIATE INVESTIGATION INTO
	)	ALLEGATIONS OF DISCRIMINATORY
	)	ACTS; EXHIBITS A - G
STATE OF HAWAI'I,	)	
DEPARTMENT OF AGRICULTURE,	)	Director Lilian S. Dorka
	)	External Civil Rights Compliance Office
Respondent.	)	Office of General Counsel, EPA
	)	
	)	

STATE OF HAWAI'I DEPARTMENT OF AGRICULTURE'S  
RESPONSE TO THE ENVIRONMENTAL PROTECTION AGENCY,  
EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE DECISION TO  
INITIATE INVESTIGATION INTO ALLEGATIONS OF DISCRIMINATORY ACTS

The STATE OF HAWAI'I, DEPARTMENT OF AGRICULTURE, ("HDOA"), by and through the State of Hawai'i Department of the Attorney General, does hereby submit this response to the Environmental Protection Agency ("EPA") External Civil Rights Compliance Office ("ECRCO") that has initiated an investigation into allegations by EARTHJUSTICE on behalf of Moms on a Mission Hui, and Pō'ai Wai Ola/West Kaua'i Watershed Alliance

(collectively “EarthJustice”). This response will address EarthJustice allegations of discriminatory actions by HDOA Pesticide Branch under 44RNO-16-R9 (HDOA). The Hawai‘i Agribusiness Development Corporation (“ADC”) will separately address issues raised by EarthJustice under 45RNO-16-R9 (ADC).

#### BRIEF BACKGROUND

By way of letter dated March 9, 2017, the EPA-ECRCO informed HDOA that it had accepted for investigation two (2) allegations from the September 14, 2016 EarthJustice “Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C section 2000d, 40 CFR Part 7 and 7 CFR Part 15” (“EarthJustice Complaint”). The EPA-ECRCO framed the allegations accepted for investigation as follows:

- (1) Whether in administering the pesticides program and the leasing and licensing of the state land program, the HDOA and/or ADC discriminated on the basis of race and/or national origin (Native Hawaiians) against farm workers and residents of West Kauai and Molokai, in violation of Title VI of the Civil Rights Act, and EPA’s implementing regulation; and
- (2) Whether the HDOA and/or ADC is complying with the procedural safeguard provisions in Title 40, Part 7, Subpart D of the *Code of Federal Regulations* (“CFR”), which require recipients of EPA financial assistance to have specific policies and procedures in place to comply with their non-discrimination obligations.

HDOA received the EPA-ECRCO notice of acceptance of administrative complaint 44RNO-16-R9 (HDOA) and 45RNO-16-R9 (ADC) on Monday, March 13, 2017. Pursuant to 40 CFR section 7.120 (d)(1)(iii), the party complained against, in this case HDOA, may submit a response to the EPA-ECRCO administrative complaint within thirty (30) calendar days of receiving notice of acceptance. Accordingly, HDOA’s response is due no later than April 12, 2017.

## ALLEGATIONS

HDOA received a copy of the September 14, 2016 EarthJustice Complaint on March 30, 2017. Based upon a review of the complaint and accompanying exhibits, HDOA understands the EarthJustice Complaint to be calling upon EPA-ECRCO and the United States Department of Agriculture (“USDA”) Office of the Assistant Secretary for Civil Rights, to investigate HDOA and ADC to ensure compliance with Title VI of the Civil Rights Act of 1964. The EarthJustice Complaint cites the following actions as evidence that HDOA has discriminated against Native Hawaiians:

- (A) Lack of Title VI programs;
- (B) Failure to limit pesticide registration;
- (C) Failure to require or implement protective buffer zones; and
- (D) Failure to enforce federal and state pesticide laws.

*See* page 7 of the EarthJustice Complaint.

EarthJustice alleges that by failing to comply with Title VI and its implementing regulations, HDOA’s actions as set forth above have had a disproportionate effect on Native Hawaiians living in West Kaua’i and the island of Moloka’i. *See* page 1 of the EarthJustice Complaint. Exactly how this disproportionate effect is being accomplished is not explained.

## HDOA RESPONSE

As to the first item accepted for investigation by EPA-ECRCO, the allegation as reframed by EPA-ECRCO does not comport with the actual allegations contained in the EarthJustice Complaint. The EarthJustice Complaint alleges that ADC is leasing or licensing State Land without protecting communities from pesticides. *See* page 13 of the

EarthJustice Complaint. The EPA-ECRCO administrative complaint expanded the scope of the EarthJustice Complaint by adding HDOA as an entity that, in administering the leasing and licensing of State Land, discriminates against Native Hawaiians, farm workers, and residents of West Kaua'i and Moloka'i. *See* page 2 of the EPA-ECRCO administrative complaint. Adding HDOA to the allegations made by EarthJustice against ADC broadened the scope of the EarthJustice claims without providing necessary supporting details. The illustrations attached to the EarthJustice Complaint as Figures 1 to 7, are general in nature, and fail to identify specific parcels, or owners of specific parcels, by anyone other than ADC. This lack of accurate information relating to non-ADC lands hampers HDOA's ability to properly respond to the administrative complaint.

HDOA strongly denies all allegations raised in the EarthJustice Complaint and the EPA-ECRCO administrative complaint.

A. HDOA has a Title VI Program.

HDOA is part of the State of Hawai'i Executive Branch. HRS section 26-4 (12). "Under the supervision of the governor, all executive and administrative offices, departments, and instrumentalities of the state government and their respective functions, powers, and duties shall be allocated among and within the following principal departments that are hereby established: . . . Department of agriculture (Section 26-16) . . ." *Id.* In performing its duties as part of the State of Hawai'i executive branch, HDOA has been tasked with the following responsibilities:

(1) Promote the conservation, development, and utilization of agricultural resources in the State;

(2) Assist the farmers of the State and any others engaged in agriculture by research projects, dissemination of information, crop and livestock reporting service, market news service, and any other means of improving the well-being of those engaged in agriculture and increasing the productivity of the lands;

(3) Administer the programs of the State relating to animal husbandry, entomology, farm credit, development and promotion of agricultural products and markets, and the establishment and enforcement of the rules on the grading and labeling of agricultural products; and

(4) Administer the aquaculture program under section 141-2.5.

HRS section 26-16 (c). In an effort to fulfill its statutory mission, HDOA has sought and received funds from the EPA and USDA.

Pursuant to 40 CFR section 7.80 (a), HDOA submitted assurance to EPA that it provides notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities. EPA has been satisfied with these assurances and has not requested any other information from HDOA on its non-discrimination program.

Pursuant to 7 CFR section 15.4, HDOA submitted assurance to USDA that any program or activity conducted by HDOA would be in compliance with Title VI of the Civil Rights Act of 1964. USDA has been satisfied with these assurances and has not requested any other information from HDOA on its non-discrimination program.

Within recent memory, it has been unnecessary for HDOA to make use of its non-discrimination program. HDOA staff does not remember anyone, including the EarthJustice complainants, contacting HDOA with accusations of discriminatory practices.

By way of a request to access a government record, EarthJustice asked HDOA to provide “a copy of any written material describing or documenting any Title VI compliance program(s) the Hawai‘i Department of Agriculture has or is implementing to ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral[.]” See Exhibit 3 attached to the EarthJustice Complaint. EarthJustice sought access to this information claiming that the requested records were “not readily available in the public

domain because [they] are not available on [H]DOA's website nor, to my knowledge, in any other publicly-accessible place." *See* page 3 of Exhibit 3 attached to the EarthJustice Complaint.

In response to this public record request HDOA provided EarthJustice with a copy of Policy No. 601.001, entitled the Discrimination/Harassment-Free Workplace Policy, and the HDOA Limited English Proficiency Plan. *See* Exhibits 6 – 8 attached to the EarthJustice Complaint. EarthJustice declined HDOA's offer to provide copies of contract provisions that require contractor's to comply with state and federal anti-discrimination laws. As explained in Exhibit 6 attached to the EarthJustice Complaint, "HDOA does not have a document specifically described as HDOA Title VI program." EarthJustice misinterpreted this statement as an assertion that no Title VI program exists at HDOA. *See* page 7 of the EarthJustice Complaint. Nothing could be further from the truth.

The HDOA website, which is accessible to the public, does provide access to non-discrimination information. The "jobs" link leads to an announcement from the State of Hawai'i Human Resources Development State Recruiting Office, which states:

... As required by Federal and/or State laws, we do not discriminate on the basis of age, sex (including gender identity or expression), religion, race, color, ancestry, national origin, disability, marital status, veteran's status, sexual orientation, arrest or court record, citizenship, genetic information or any other protected characteristics. The State of Hawai[']i is an equal opportunity employer and complies with applicable State and Federal laws relating to employment practices.

*See* Exhibit A.

This announcement also contains steps to take for decision review. *See* Exhibit A. The HDOA website also provides a link to the USDA website, which contains a link to the USDA Non-Discrimination Statement. *See* Exhibit B.

The State of Hawai'i Human Resources Development office maintains the Policies and Procedures Manual that is issued for Executive Branch Civil Service. *See* Exhibit C. HDOA, being a part of the Executive Branch, is covered by these Policies and Procedures; notably Policy No. 601.001. *See* Exhibit F. Policy No. 601.001 specifically states that "The State and its appointing authorities are required to and will take appropriate action when discrimination, harassment or retaliation is based on a person's protected class. . . . Every State employee is responsible for assuring that work in the executive branch is conducted in an atmosphere that respects the dignity of every State employee, and people with whom the State conducts business." *See* Exhibit 7 attached to the EarthJustice Complaint. Policy No. 601.001 contains reporting procedures and also provides information on the Hawai'i Civil Rights Commission and the Equal Employment Opportunity Commission.

The Hawai'i Civil Rights Commission ("CRC") is a state agency dedicated to enforcing state laws prohibiting discrimination. The CRC was created by Act 219, 1988 Haw. Sess. Laws 387, and codified as HRS chapter 368. The CRC was established "to provide a mechanism that provides for a uniform procedure for the enforcement of the State's discrimination laws." HRS section 368.1. The CRC has jurisdiction over HRS chapter 368, part I of HRS chapter 378, part I of HRS chapter 489, and HRS chapter 515. *See* HRS section 368-11(a). These Hawai'i statutes compliment the federal non-discrimination laws. HRS chapter 378 addresses discriminatory employment practices; HRS chapter 489 addresses discrimination in public accommodations; and, HRS chapter 515 addresses discrimination in real property transactions.

It is interesting to note that a quick internet search using the terms "State of Hawai'i", "discrimination policy", and "Title VI", will direct the user to the State of Hawai'i Department of Human Resources Development and CRC websites. As the attached exhibits demonstrate,



HDOA does have specific policies and procedures in place to comply with its non-discrimination obligations. *See* Exhibits A to F. These policies and procedures are readily available to the public.

HDOA is mindful of its obligation under Article I, Section 5 of the Constitution of the State of Hawai‘i, which provides that: “No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person’s civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.” (Emphasis added.) HDOA is charged with the responsibility of enforcing Hawaii’s pesticide laws and it is a responsibility HDOA takes very seriously.

The EarthJustice Complaint accuses HDOA of failing to enforce Federal and State Pesticide laws. *See* page 12 of the EarthJustice Complaint. In 2015, HDOA began a concerted effort to bring its enforcement actions to top tier status. HDOA has eliminated the enforcement backlog. HDOA responds to pesticide complaints in a timely manner, generally within twenty-four (24) hours. Investigations are conducted in a thorough and professional manner. HDOA continues to conduct as many routine inspections as possible. HDOA has initiated changes to its education program to ensure applicators have the knowledge necessary to protect workers and the public from off-label pesticide use. Rules addressing activities related to the safe use of pesticides as set forth in Title 4, Chapter 66, *Hawai‘i Administrative Rules*, have been updated and are currently awaiting public comment.

HDOA has successfully accomplished this increased performance despite limited resources; and, despite having these limited resources diverted to respond to public information requests and baseless allegations. Suffice it to say, when a violation of the pesticide laws is

found to have occurred within the State of Hawai‘i, action commensurate with HDOA’s power and abilities has been, and will continue to be, faithfully enforced.

- B. HDOA only licenses pesticide products for use in Hawai‘i that are deemed safe for use by the EPA when used according to label directions.

Section 136a of Title 7, *United States Code* (“USC”) prohibits any person, in any State, from distributing or selling “any pesticide that is not registered” with the EPA. *Id.* The State’s ability to license pesticide products is limited by 7 USC section 136v, which provides that: “A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.” *Id.* Thus, if a pesticide product has not been registered by EPA it may not be used or licensed by the State of Hawai‘i, except under limited circumstances. *See* HRS section 149A-11 (a)(2) (it is unlawful for any person to distribute, sell, or use any pesticide unless a label bearing all information in section 149A-15 is affixed to the container); and HRS section 149A-15 (7) (each container must have a printed label attached that lists the “EPA registration and establishment numbers”); *See also* HRS section 149A-12 (lists exemptions to the prohibitions set forth in HRS section 149A-11 (a)).

The EPA has established a rigid protocol for registering pesticide products. *See* 7 USC section 136a (c). The EPA evaluates pesticide products for human and environmental risks. *Id.* The EPA reviews the pesticide label to ensure the directions are adequate, easy to understand, and appropriate to address safe use. 40 CFR section 156.10. The EPA reviews each pesticide registration at least once every fifteen (15) years. 7 USC section 136a (g). The EPA has the resources and expertise available to evaluate pesticides products for any risk to human health and the environment. Based upon this expertise, the State of Hawai‘i relies upon the EPA’s

registration process and periodic review to ensure all pesticides licensed for use in the State are safe when used according to label directions.

Likewise, the EPA has used its expertise and resources to determine when application of certain pesticides require establishment of a buffer zone to ensure no unreasonable adverse effects result from the pesticide application. The buffer zone requirement is part of the product labeling. *See* label for Paladin Pic-21, EPA Reg. No. 55050-7 at [www.epa.gov/soil-fumigants/soil-funigant-labels-chloropicrin](http://www.epa.gov/soil-fumigants/soil-funigant-labels-chloropicrin) (last visited April 11, 2017). HDOA takes enforcement action in instances where the applicator is found to have used a pesticide in a manner inconsistent with its label by failing to establish a buffer zone when required by the pesticide labeling. *See* HRS section 149A-31 (1). HDOA relies on EPA's superior ability to conduct scientific investigation into environmental effects of pesticides when determining the necessity of requiring a buffer zone.

All of the restricted use pesticides cited by EarthJustice as justification for its discrimination allegations, (Chlorpyrifos, Atrazine, Metolachlor, Bifenthrin, and Paraquat Dichloride), have been approved for use by the EPA. Before a pesticide product is given registration approval, the EPA must determine that the pesticide "will perform its intended function without unreasonable adverse effects on the environment" and the pesticide "when used in accordance with widespread and commonly recognized practice . . . will not generally cause unreasonable adverse effects on the environment." 7 USC section 136a (c)(5)(C) and (D) (emphasis added). The term "environment" is defined in 7 USC section 136 (j) and "includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these." (Emphasis added.) The EPA has determined that Chlorpyrifos, Atrazine, Metolachlor, Bifenthrin, and Paraquat Dichloride, when used as directed,

will not cause unreasonable adverse effects to the environment, including sensitive populations. It is incumbent upon the EPA to cancel a pesticide's registration should any evidence of unreasonable adverse effects develop. *See* 7 USC section 136d (b). EPA has the power to remove a pesticide from circulation when it is deemed unsafe. Again, until such time that EPA chooses to cancel a pesticide registration, HDOA will rely on EPA's superior ability to conduct scientific investigation into environmental effects of pesticides.

EarthJustice cited, as justification for its discrimination allegations, the May 25, 2016 Findings and Recommendations of a Joint Fact Finding Study Group, Pesticide Use by Large Agribusinesses on Kaua'i ("JFF Study Group"). However, what the JFF Study Group actually discovered was that little reliable data was available to study, and what data was available did not support the conclusion that the Kaua'i Westside population was suffering from environmental harm. A review of the JFF Study Group's Executive Summary provides an informative synopsis of its findings:

Information was patchy and fragmented; incomplete proprietary data; small statistical samples; confounding demographic variables; lack of human and environmental health exposure data; no information on the location, times or volume of pesticide applications; pesticides discovered in trace amounts at levels below EPA action standards; no local data on pesticide effects on birds and bats; minimal data on pesticide effects on wildlife; no information to conclude pesticide use plays any role in the health of Kaua'i residents; small West Side population yields statistically insignificant results; no lifestyle or socio-economic data included; and, conflicting opinions of what caused evacuation incidents at Waimea Canyon Middle School.

*See* pages 6 to 9 of the Findings and Recommendations of a Joint Fact Finding Study Group dated May 25, 2016 available at [www.accord3.com/pg1000.cfm](http://www.accord3.com/pg1000.cfm) (last visited April 11, 2017).

In October 2014, Kaua'i residents requested the United States Department of Health & Human Services, Division of Community Health Investigations, Agency for Toxic Substances and Disease Registry ("ATSDR"), to evaluate whether agro-chemical practices were affecting

the health of their communities. A study was conducted and in August of 2016 a report was generated. This report concluded with the observation that “ATSDR is not able to demonstrate scientifically whether people near agricultural fields in Kaua‘i west side communities are being exposed to pesticides at levels of health concern.” See page 5 of Exhibit G. EarthJustice’s allegation that Native Hawaiians are disproportionately suffering adverse effects from pesticide use has not been proven.

The responsibility for safeguarding the public health has been delegated to the Hawai‘i Department of Health (“HDOH”). “The department of health shall have general charge, oversight, and care of the health and lives of the people of the State, and shall pursue as a goal, the achievement of health equity.” HRS section 321-1(a) (Supp. 2016). “The department of health shall maintain, as it deems advisable . . . , an environmentally-related human illness and injury surveillance system for conditions determined by the director to present a threat to public health in order to ascertain the incidence, distribution, and other epidemiological characteristics of these illnesses and injuries.” HRS section 321-311. “Environmentally-related human illnesses or injuries are those designated acute or chronic adverse health effects associated with exposure to pesticides, lead, or other toxic substances determined by the director to present a threat to public health.” HRS section 321-312 (emphasis added). “Nothing in [the Hawai‘i Pesticides Law] shall be construed to amend or alter the functions, duties, and powers of the department of health relative to chapters 321, 322, 328, and 330.” HRS section 149A-4. HDOH is the department statutorily obligated to investigate allegations of environmentally-related human illnesses.

### C. HDOA Leasing and Licensing of State Land.

As mentioned above, the EarthJustice Complaint limits the allegations of Title VI violations in the leasing and licensing of State land to ADC. However, in its investigation of the EarthJustice Complaint allegations, EPA-ECRCO has enlarged the scope of the EarthJustice Complaint to include HDOA leasing and licensing of State land on Moloka'i and West Kaua'i without any clear explanation or allegation about the HDOA lands. EPA-ECRCO has not provided a clear delineation on the exact area it considers to encompass "West Kaua'i". As such, HDOA has made a good faith effort to determine the area it believes to be West Kaua'i.

The HDOA Agricultural Resource Management Division currently oversees approximately twenty-four (24) leases over twenty-four (24) parcels of land (about 1,036 acres in total) on Moloka'i and approximately fourteen (14) leases over twenty-four (24) parcels of land in West Kauai (about 260 acres in total). Of these, only two (2) leases over two (2) parcels of land (about 95 acres) on Moloka'i and four (4) leases over four (4) parcels of land (about 98 acres) on West Kaua'i were found to be leased to seed companies.

These lands were transferred to HDOA from the Hawai'i Department of Land and Natural Resources with existing leases and lessees and/or revocable permits and permittees pursuant to Governor Executive Orders and HRS Chapter 166 (Agricultural Park Lands), or pursuant to HRS Chapter 166E (Non-Agricultural Park Lands). HDOA consents to assignments by lessees to assignees chosen by the lessees so long as the assignment and the assignees comply with any and all requirements under HRS Chapter 166 or Chapter 166E, as applicable, and with HDOA's related administrative rules. At least with respect to HDOA lands, the selection of tenants and lease terms were not selected by HDOA, and HDOA cannot be held responsible for circumstances outside of its control.

## CONCLUSION

The allegations made by EarthJustice are nothing more than supposition and innuendo, not fact. HDOA does have a Title VI policy in place, along with the entire State of Hawai'i Executive Branch. EPA is the agency that oversees pesticide safety and use and HDOA defers to its knowledge and expertise in the field. No pesticide product is licensed in Hawai'i unless it is first registered with EPA. EPA has ratified HDOA's actions by approving the pesticides for registration in the first place. Accordingly, HDOA respectfully requests that the EPA-ECRCO investigation into the merits of the EarthJustice allegations be terminated.

DATED: Honolulu, Hawai'i, 4/12/2017.

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Attorney General of Hawai'i

Delanie D. Prescott-Tate  
DELANIE D. PRESCOTT-TATE  
Deputy Attorney General

Attorneys for Petitioner  
DEPARTMENT OF AGRICULTURE  
STATE OF HAWAII

## **IMPORTANT INFORMATION**

**State of Hawaii Department of Human Resources Development  
State Recruiting Office – 235 South Beretania Street, Room 1100 – Honolulu, HI 96813**

*The information you provide will be used to determine whether you meet public employment requirements and the minimum qualification requirements in the Class Specifications. As required by Federal and/or State laws, we do not discriminate on the basis of age, sex (including gender identity or expression), religion, race, color, ancestry, national origin, disability, marital status, veteran's status, sexual orientation, arrest or court record, citizenship, genetic information or any other protected characteristics. The State of Hawaii is an equal opportunity employer and complies with applicable State and Federal laws relating to employment practices.*

**MERIT CIVIL SERVICE SYSTEM:** The employment of persons in the civil service, as defined by State law, is governed by the merit principle. Applicants must meet the minimum qualification requirements of the position being sought, including all education, experience, licensure, certification, security clearances, and other public employment requirements for State Civil Service employment. It is the applicant's responsibility to provide complete information. The information submitted may be verified. Applicants must meet the requirements and qualify on appropriate employment related tests to be eligible for employment consideration.

**LEGAL AUTHORIZATION TO WORK REQUIREMENT:** The State of Hawaii requires all persons seeking employment with the government of the State shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States.

**HAWAII STATE RESIDENCY REQUIREMENT:** Effective July 1, 2007, persons who are non-residents of the State of Hawaii will have thirty (30) days from the date they begin their State employment to become Hawaii residents. While an employee of the State of Hawaii, they must maintain their Hawaii residency.

**PHYSICAL/MEDICAL REQUIREMENTS:** Applicants must be able to perform the essential functions of the position effectively and safely, with or without reasonable accommodation.

**REASONABLE ACCOMMODATION:** Applicants with special needs should contact our office during business hours at (808) 587-0936 at the time of application. Callers from neighbor islands may call toll-free giving extension number 70936 when prompted: Kauai 273-3141; Maui 984-2400; Hawaii 974-4000; Molokai and Lanai 1-800-468-4644.

**JOB APPLICATIONS:** The State Recruiting Office utilizes a highly efficient computerized recruiting system from job-building to interview referrals. Applicants save time by creating one application to apply for current and future jobs. Please refer to our "First Time Users Guide" for step-by-step instructions. Applicants who are unable to apply online are asked to contact us at (808) 587-0936 during normal business hours for assistance.

**LANGUAGE ACCESS ASSISTANCE:** All of our written and oral material will be provided to you in English. If you need assistance, please contact our department's Language Access Coordinator by telephone at (808) 587-1110 during normal business hours or write to the Language Access Coordinator, Department of Human Resources Development, 235 South Beretania Street, 14<sup>th</sup> Floor, Honolulu, HI 96813.

**VETERANS PREFERENCE POINTS:** (Open Competitive Recruitments Only). To receive 5 Veterans Preference Points, an applicant must submit a copy of the DD214 (Member 4) verifying dates of honorable service. To receive 10 Veterans Preference Points, submit a copy of an official statement/letter from the U.S. Department of Veteran Affairs or armed service dated within the past 12 months which confirms your qualification to receive 10 points preference.

*(Continued on page 2)*

**EXHIBIT A**



**CRIMINAL HISTORY RECORD CHECK:** Individuals who are recommended for hire are required to undergo a criminal history record clearance and other checks, as applicable.

**STATE RECRUITING OFFICE'S LEVELS OF REVIEW:** Applicants will be notified of their status in writing. Applicants who do not agree with a decision or action taken by the State Recruiting Office shall have three successive levels of review. Each review must be concluded before an applicant may request the next higher review. Note that each review is addressed to a specific office.

**1. ADMINISTRATIVE REVIEW.** This is the first level of review. All applicants will be notified of the status of their application when processing of the application is completed. Applicants who do not agree with an action taken by our office or who have questions about their application are strongly advised to first call our office to obtain clarification. Office staff may be reached during business hours at (808) 587-0936. Applicants who still do not agree with an action taken by our office may then formally request an Administrative Review in writing. The Request must include the job title, recruitment number, and any relevant information, and must be postmarked no later than seven (7) working days from the date of our notice. Requests should be mailed via U.S. Postal Service to: State Recruiting Office, State Department of Human Resources Development, 235 South Beretania Street, Room 1100, Honolulu, Hawaii 96813. This office is unable to accept requests for review via telephone or fax.

**2. INTERNAL COMPLAINT.** The Internal Complaint is the second level of review. An applicant who does not agree with an action resulting from the Administrative Review may then file an Internal Complaint with the State Department of Human Resources Development (HRD). More information about the Internal Complaint procedures, required forms, and mailing address will be provided in our letter regarding the Administrative Review, if necessary.

**3. APPEAL TO THE MERIT APPEALS BOARD.** An appeal to the Merit Appeals Board is the third level of review. An applicant who does not agree with an action resulting from the Internal Complaint with the State Department of Human Resources Development (HRD) may then file an appeal to the Merit Appeals Board. Further information and details regarding procedures, required forms, and the mailing address to file an appeal are available at <http://hawaii.gov/hrd/main/ecd/mab>. If the applicant does not agree with the internal complaint decision rendered by HRD, it may be appealed in writing to the State Merit Appeals Board within twenty (20) days from the date of the action on the internal complaint. An internal complaint must have been completed by HRD before an appeal may be requested.

**If you have questions, please contact our office during business hours at (808) 587-0936 for further information.**



U.S. DEPARTMENT OF AGRICULTURE

# Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

**EXHIBIT B**



# INDEX - STATE OF HAWAII HUMAN RESOURCES SYSTEM POLICIES & PROCEDURES MANUAL

Issued for the Executive Branch Civil Service by the  
State Department of Human Resources Development  
Effective August 11, 2003                      Updated November 21, 2016

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- 902.001 Return to Work Priority Program (10 attachments) (rev. 10/27/03)

#### 10. **EXEMPT AND APPOINTED EMPLOYEES**

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- 1000.002 Appointment of Exempt Employees to Replacement Civil Service Positions (rev. 11/30/11)

~~1000.004 Medical, Physical, and Mental Health Requirements for Exempt Employees~~  
(Superseded and replaced by P&P No. 301.005, rev. 08/14/14, "Medical, Physical and Mental Health Requirements for Employment")

The State of Hawai'i Human Resources System Policies & Procedures Manual is promulgated by the Department of Human Resources Development, as authorized by the Hawai'i Revised Statutes. Policies and Procedures may be revised from time to time. A revised policy or procedure shall supersede any previous policy or procedure on the same subject matter. Individual departments may issue internal policies and procedures, to the extent they do not supersede or negate those issued by the Department of Human Resources Development.

Office of the Director, State of Hawai'i, Department of Human Resources Development  
235 South Beretania Street, Honolulu, Hawaii 96813

## APPENDIX B

### DEPARTMENT OF HUMAN SERVICES POLICIES AND PROCEDURES

4.10.1 Discrimination Complaint can be found at:

<http://humanservices.hawaii.gov/wp-content/uploads/2014/10/Policy-4.10.1-Disc-Complaint.pdf>

4.10.2 Harassment Prevention can be found at

<http://humanservices.hawaii.gov/wp-content/uploads/2014/10/Policy-4.10.2-Harassment-Prevention.pdf>

4.10.3 Opportunity to Participate can be found at:

<http://humanservices.hawaii.gov/wp-content/uploads/2014/10/Policy-4.10.3-Oppor-to-Participate.pdf>

4.10.4 Access can be found at:

<http://humanservices.hawaii.gov/wp-content/uploads/2014/10/Policy-4.10.4-Access.pdf>

**EXHIBIT D**



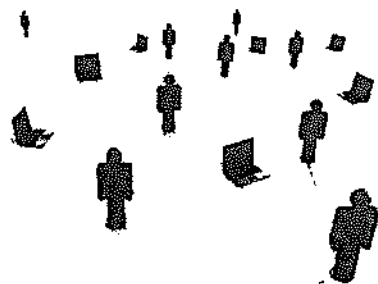
(<http://dhrd.hawaii.gov>)

Department of Human Resources Development  
(<http://dhrd.hawaii.gov>)

Home (<http://dhrd.hawaii.gov>) » State Job Opportunities (<http://dhrd.hawaii.gov/job-seekers>) » Applicants' Rights Under Federal and State Employment Laws

## APPLICANTS' RIGHTS UNDER FEDERAL AND STATE EMPLOYMENT LAWS

(<http://dhrd.hawaii.gov/wp-content/uploads/2013/10/applicantrights.jpg>) Federal and State laws provide certain rights to applicants. On this page you will find links that will provide you information relating to:



### FEDERAL

- **Federal Family Medical Leave Act**  
(<http://www.dol.gov/whd/regs/compliance/posters/fmla.htm>) – The federal Family Medical Leave Act requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for various reason, including pre-natal medical conditions, caring for children after birth, caring for themselves or family members with serious medical conditions, or for family members in the military.
- **Employee Polygraph Protection Act**  
(<http://www.dol.gov/whd/regs/compliance/posters/eppa.htm>) – The Employee Polygraph Protection Act prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment, click the link for more information.

### STATE

- **Hawai'i State Laws** (<http://labor.hawaii.gov/wp-content/uploads/2013/07/Labor-Law-Poster20130702.pdf>) – Hawai'i provides various rights to employees, including disability compensation, protection from employment discrimination, rights to dislocated workers, military leave, occupational safety and health regulations, unemployment insurance, wage and hour regulations, and whistle-blower protection.
- **DHRD's Discrimination/Harassment-Free Workplace Policy**  
(<http://dhrd.hawaii.gov/policies-procedures/eeopandp/>) – The State and its appointing authorities are committed to promoting and maintaining a productive work environment free of any form of discrimination, harassment and retaliation. DHRD's Discrimination/Harassment-Free Workplace Policy applies to applicants and employees to

4/11/2017

Department of Human Resources Development | Applicants' Rights Under Federal and State Employment Laws

the Executive Branch departments (excluding the Department of Education and the University of Hawai'i Board of Regents appointees).



(http://dhrd.hawaii.gov)



Department of Human Resources Development  
(http://dhrd.hawaii.gov)

Home » <http://dhrd.hawaii.gov> » Equal Employment Opportunity Office

## EQUAL EMPLOYMENT OPPORTUNITY OFFICE

The Equal Employment Opportunity Office (EEO Office) was created to ensure compliance with all federal and state non-discrimination laws for all applicants and employees of the State Executive Branch (excluding the Department of Education and University of Hawaii Board of Regent appointees). The EEO Office develops policies (<http://dhrd.hawaii.gov/policies-procedures/eeopandp/>), oversees investigations, provides guidance to departments relating to recruitment and personnel practices, and conducts training to ensure an environment free of discrimination and harassment. In addition, the EEO Office provides guidance for departments relating to reasonable accommodations for qualified individuals with disabilities.



These services are provided to support the State's commitment to promoting and maintaining a productive work environment free of any form of discrimination, harassment and retaliation. The State does not tolerate workplace discrimination, harassment or retaliation. The State is required to and will take appropriate action when discrimination, harassment or retaliation is based on a person's protected class.

Protected classes covered by State and Federal law include:

- Race
- Color
- Sex, including gender identity or expression
- Sexual Orientation
- Condition of Pregnancy
- Breastfeeding
- Religion
- National Origin

**EXHIBIT F**

- Ancestry
- Age
- Physical or Mental Disability
- Genetic Information
- Marital Status
- Arrest & Court Record (except as permissible by applicable laws)
- Income Assignment for Child Support
- National Guard Absence
- Uniformed Service
- Veteran Status
- Citizenship (except as permissible by applicable laws)
- Credit History or Credit Report (unless directly related to a bona fide occupational qualification)
- Domestic or Sexual Violence Victim Status (if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status)
- Any other classification protected under applicable state or federal laws.

The State will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action. Every State employee is responsible for assuring that work in the executive branch is conducted in an atmosphere that respects the dignity of every State employee, and people with whom the State conducts business. State employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this policy. In addition, State employees are expected to avoid retaliation against an individual who makes a complaint, and/or participates in or provides information for an investigation relating to discrimination and/or harassment.

The State will also make reasonable accommodations, if needed, to the extent required by law, for employees who are disabled, pregnant (including pregnancy-related disabilities), breastfeeding, victims of sexual or domestic abuse, or for bona fide religious purposes.

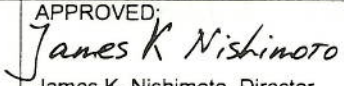
**If an applicant or employee of the State Executive Branch (excluding the Department of Education and University of Hawaii Board of Regent appointees) believes that they have been a victim of discrimination, they may contact the EEO Office at (808) 587-1162 or [eeo@hawaii.gov](mailto:eeo@hawaii.gov).**

Applicants or employees of the Department of Education, contact the Department of Education Civil Rights Compliance Office at (808) 586-3322 (or relay) or [susan\\_kitsu@notes.k12.hi.us](mailto:susan_kitsu@notes.k12.hi.us).

4/11/2017

Department of Human Resources Development | Equal Employment Opportunity Office

Applicants or employees of the Judiciary, contact the Judiciary's EEO Office at 539-4336.

<p align="center"><b>STATE OF HAWAII</b>  <b>DEPARTMENT OF HUMAN RESOURCES</b>  <b>DEVELOPMENT</b>  <b>POLICIES AND PROCEDURES</b></p>		POLICY NO. 601.001	NO. of PAGES 8 2 Attachments
		EFF. DATE October 15, 2013	REV. NO./Date 1 November 16, 2016
TITLE: <b>DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY</b>		APPROVED:  James K. Nishimoto, Director	

## I. POLICY

The State and its appointing authorities are committed to promoting and maintaining a productive work environment free of any form of discrimination or harassment based on a person's protected class and retaliation for engaging in protected activity. The State and its appointing authorities do not tolerate workplace discrimination, harassment or retaliation and are required to and will take appropriate action when discrimination, harassment or retaliation occurs.

The State and its appointing authorities will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action. Every State employee is responsible for assuring that work in the Executive Branch is conducted in an atmosphere that respects the dignity of every State employee, and people with whom the State conducts business. State employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this Policy. In addition, State employees are expected to avoid retaliation against an individual who makes a complaint, participates in or provides information for an investigation relating to discrimination and/or harassment, or makes a request for reasonable accommodation.

**A violation of this Policy may result in disciplinary action, up to and including termination, in accordance with applicable state laws, rules, policies, and collective bargaining agreements.**

The State and its appointing authorities will also make reasonable accommodations upon request, if needed, to the extent required by law, for employees who are disabled, including pregnancy-related disabilities, breastfeeding or expressing, victims of sexual or domestic abuse, or for bona fide religious purposes. Any employee who believes he/she needs accommodation for any of these reasons should contact his/her manager, Departmental Human Resources Officer (or his/her designee), Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or [eeo@hawaii.gov](mailto:eeo@hawaii.gov)). For reasonable accommodations related to disability, see Policy & Procedure 601.002, Reasonable Accommodations for Employees and Applicants with Disabilities.



## **DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY**

**POLICY NO. 601.001 (Rev. 11/16/16)**

### **II. PURPOSE**

The purpose of this Policy is to assure compliance with all federal and state laws and to prevent protected class-based discrimination and harassment and retaliation in the workplace.

This Policy is intended to protect all applicants for employment, employees, and individuals providing services to the State on a non-paid basis (e.g. volunteers or interns) from discriminatory or harassing conduct by employees or non-employees and to prevent employees from engaging in discriminatory or harassing conduct directed to any individual.

### **III. DEFINITIONS**

"Discrimination" means any employment action taken because of a person's protected class.

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Genetic information" includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

"Protected class" includes:

- race,
- color,
- sex, including gender identity or expression,
- sexual orientation,
- condition of pregnancy,
- act of breastfeeding or expressing milk,
- religion,
- national origin,
- ancestry,
- age,
- disability,

## **DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY**

**POLICY NO. 601.001 (Rev. 11/16/16)**

- genetic information,
- marital or civil union status,
- arrest and court record (except as permitted by applicable laws),
- income assignment for child support,
- national guard absence,
- uniformed service,
- veteran status,
- citizenship (except as permitted by applicable laws),
- credit history or credit report (unless directly related to a bona fide occupational qualification),
- domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status, or
- any other classification protected under applicable state or federal laws.

"Retaliation" means an adverse action taken in response to or in an attempt to prevent an individual from engaging in protected activity.

- "Adverse action" means any action that is likely to dissuade a reasonable person from opposing protected class discrimination, including, but not limited to, employment actions such as termination, refusal to hire, and denial of promotion; other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.
- "Protected activity" means opposition to a practice believed to be unlawful discrimination, participation in an employment discrimination proceeding, or making a request for reasonable accommodation.
- There must be a causal connection between the adverse action and the protected activity, meaning that the adverse action was taken because of the protected activity. If there is a legitimate, non-retaliatory reason for the adverse action, it will not be retaliation.

"Unlawful harassment" means any unwelcome behavior based on a person's protected class which is sufficiently severe or pervasive and has the purpose or effect of either unreasonably interfering with the person's work performance or creating an intimidating, hostile, or offensive work environment.

#### **IV. SCOPE**

This Policy applies to all employees and applicants in the Executive Branch under the jurisdiction of the Department of Human Resources Development,



## **DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY**

**POLICY NO. 601.001 (Rev. 11/16/16)**

whether civil service or exempt employees, full-time or part-time employees, permanent or temporary employees.

### **V. PROHIBITED CONDUCT**

- A. It is a violation of this Policy to engage in protected class discrimination or harassment. Protected class discrimination or harassment does not have to rise to the level of severe or pervasive conduct or unlawful discrimination to violate the Policy.
1. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision that results in a significant change in benefits, or terms and conditions of employment.
  2. Harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this Policy, and includes, but is not limited to:
    - a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, brushing against a person's clothing or body, or pinching;
    - b. Requests for sexual favors, threats or adverse actions for refusing sexual favors, threats or adverse actions for refusing a sexual advance, or promises of employment benefits in exchange for sexual favors;
    - c. Lewd descriptions, sexual jokes, comments about physical attributes, pressure for sexual activity, such as repeated and unwanted attempts at a romantic relationship, or sexually explicit questions;
    - d. Displays of demeaning or insulting objects, pictures, or photographs relating to any protected class;
    - e. Demeaning, insulting, or intimidating written, recorded, or electronically transmitted messages (such as email, text messages, voicemail, and Internet materials) relating to any protected class; and/or
    - f. Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based on or directed at any protected class.
- B. Retaliation is prohibited. Retaliation includes, but is not limited to, any adverse action taken in response to or in an attempt to prevent an individual from taking any of the following actions:

## DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY

POLICY NO. 601.001 (Rev. 11/16/16)

1. Opposing a practice believed to be unlawful discrimination;
2. Participating in a complaint investigation or proceeding; or
3. Making a request for reasonable accommodation.

### VI. PROCEDURES

#### A. REPORTING PROCEDURES

1. The State and its appointing authorities encourage employees to report discrimination, harassment, and/or retaliation, regardless of the identity of the alleged offender or whether the offender is an employee of the Executive Branch, before it becomes severe or pervasive so that steps may be taken to stop the offending behavior before it rises to the level of unlawful behavior.
2. Conduct that violates the Discrimination/Harassment-Free Workplace Policy should be reported to the employee's manager, the Departmental Human Resources Officer (or his/her designee), the Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or [eeo@hawaii.gov](mailto:eeo@hawaii.gov)).
3. Anyone who observes or experiences discrimination, harassment or retaliation prohibited under this Policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. **Employees are not required, however, to make a complaint to the offender.**
4. A complaint or report may be made either orally or in writing and may be made using the Discrimination Complaint Form (see Attachment A). A complaint or report, whether oral or written, should include: name of the alleged offender(s), including position and department, if known, a summary of the offensive acts, the dates, times and places of the incidents, the names of witnesses to the events, desired remedy or relief and copies of documents, if any, that support the complaint or report.

#### B. CONFIDENTIALITY

The State and its appointing authorities will take appropriate steps to



## **DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY**

**POLICY NO. 601.001 (Rev. 11/16/16)**

protect the confidentiality of discrimination, harassment and retaliation complaints, investigations, and reports, whether substantiated or unsubstantiated. However, complete confidentiality cannot be guaranteed and information regarding complaints, investigations and reports shall be shared with appropriate individuals and agencies on a "need to know" basis, with due consideration for the safety and security of individuals involved in the investigation.

### **C. RESPONSIBILITIES**

#### **1. Department Responsibilities**

- a. In alignment with this Discrimination/Harassment-Free Workplace Policy, department or agency heads are responsible for developing and enforcing their own discrimination/harassment free workplace investigation and enforcement processes within their own departments or agencies.
- b. Should a conflict exist, this Discrimination/Harassment-Free Workplace Policy shall take precedence over all policies and/or procedures that are developed by the departments or agencies. This Policy does not prohibit departments or agencies from providing more protection than allowed under this Policy when it is required in conjunction with federal grants.
- c. Departments are responsible for assuring that all of its employees are provided a copy or have access to a copy of this Policy and for maintaining documentation that the Policy has been provided or made available to its employees. Attachment B to this Policy may be used as documentation.
- d. Departments shall forward a report of any and all complaints of discrimination, harassment or retaliation, whether made internally or to the Equal Employment Opportunity Commission or Hawaii Civil Rights Commission, to designated persons within their department or agency and, in addition, to the Executive Branch Equal Employment Opportunity Office.
- e. Departments are responsible for making sure all complaints are investigated promptly. Departments may take appropriate interim action while an

## **DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY**

**POLICY NO. 601.001 (Rev. 11/16/16)**

investigation is pending, including placing an accused person on leave or temporarily in another position.

- f. If the Department finds that an employee violated the Discrimination/Harassment-Free Workplace Policy, the Department will take appropriate corrective action, up to and including termination of the employee, in accordance with applicable State laws, rules, policies, and collective bargaining agreements. If the person found to have violated the Policy is not employed by the State or its appointing authorities, other appropriate action shall be taken, including notice to the actual employer or prohibiting the person from the worksite.

### **2. Managers' and Supervisors' Responsibilities**

- a. Managers and supervisors are responsible for maintaining a workplace free of harassment, discrimination and retaliation. Managers and supervisors who witness or receive reports of offending conduct shall take immediate and appropriate action to ensure any discriminatory behavior ceases, and shall forward all such reports to the designated persons within their department.
- b. Managers and supervisors, as assigned within their departments, shall investigate complaints of alleged violations of this Policy in a fair and impartial manner.

### **3. Employee Responsibilities**

- a. Employees are expected to conduct themselves appropriately while at work and during work-related functions and refrain from any acts of discrimination, harassment based on a person's protected class or retaliation for engaging in a protected activity.
- b. Employees who experience or observe any conduct that violates this Policy, have a responsibility to report the incident(s) in order to correct and prevent unlawful harassment, discrimination or retaliation.

## **D. REFERRING COMPLAINTS TO EXTERNAL AGENCIES**

- 1. In addition to the procedures described above, employees may make complaints about discrimination, harassment, or retaliation in the workplace to other appropriate agencies, including but not limited to, the federal Equal Employment



## **DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY**

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Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)) and the Hawai'i Civil Rights Commission (<http://labor.hawaii.gov/hcrc>).

2. Employees wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer. Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawai'i Civil Rights Commission no later than one hundred eighty (180) days after the discriminatory practice has occurred or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date: (1) the alleged unlawful discriminatory act occurred; or (2) the last occurrence in a pattern of ongoing discriminatory conduct.

### **VII. AUTHORITIES AND REFERENCES**

Title VII of the Civil Rights Act of 1964 as amended

The Pregnancy Discrimination Act

The Age Discrimination in Employment Act of 1967

The Equal Pay Act of 1963

Titles I and II of the Americans with Disabilities Act of 1990 as amended

Sections 102 and 103 of the Civil Rights Act of 1991

Sections 503 and 504 of the Rehabilitation Act of 1973

The Genetic Information Nondiscrimination Act of 2008

The Immigration Reform and Control Act of 1986

Chapter 378, Hawaii Revised Statutes

### **VIII. ATTACHMENTS**

Attachment A: Discrimination Complaint Form, HRD Form 613

Attachment B: Discrimination/Harassment-Free Workplace Policy  
Acknowledgment Form

STATE OF HAWAII  
Attachment A  
DISCRIMINATION COMPLAINT FORM

HRD FORM 613

**COMPLAINANT INFORMATION**

Last Name	First Name	Middle Name
Address and Phone	Job Title, Branch, Division	

**ALLEGED OFFENDERS**

Name	Job Title/Organization
Name	Job Title/Organization
Name	Job Title/Organization

**BASIS OF COMPLAINT**

Check box or boxes for applicable protected class.

<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> Sex/Gender	<input type="checkbox"/> Gender Identity or Expression	<input type="checkbox"/> Sexual Orientation	<input type="checkbox"/> Pregnancy
<input type="checkbox"/> Breastfeeding	<input type="checkbox"/> Religion	<input type="checkbox"/> National Origin	<input type="checkbox"/> Ancestry	<input type="checkbox"/> Age	<input type="checkbox"/> Disability
<input type="checkbox"/> Genetic Information	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Arrest and Court Records	<input type="checkbox"/> Income Assignment for Child Support	<input type="checkbox"/> National Guard Absence	<input type="checkbox"/> Uniformed Service/Veteran's Status
<input type="checkbox"/> Citizenship	<input type="checkbox"/> Credit History or Credit Report	<input type="checkbox"/> Domestic or Sexual Violence Victim Status	<input type="checkbox"/> Retaliation	<input type="checkbox"/> Other (Specify)	

**COMPLAINT SUMMARY**

(Provide details of who, what, when, and where. Attach additional pages if needed.)

**REQUESTED REMEDY**

(Provide corrective action or remedies you are seeking.)

**WITNESS INFORMATION**

(Provide names and contact information for witnesses, if any. Attach additional pages if needed.)

Witness Name	Job Title/Organization/Phone
Witness Name	Job Title/Organization/Phone
Witness Name	Job Title/Organization/Phone

The information provided above is truthful and accurate to the best of my knowledge.

Complainant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Complaint Received by: \_\_\_\_\_

Name, Title, Signature

Date: \_\_\_\_\_

Revised 6/13



## Enclosure for Letter to ~~Redacted~~ Regarding Pesticide Usage on Agricultural Land, Kaua'i, Hawai'i

### Background

On October 10, 2014, the Agency for Toxic Substances and Disease Registry (ATSDR) was contacted by Kaua'i residents and requested to evaluate whether agro-chemical practices may be impacting the health of their communities. The communities are concerned that local agricultural companies are utilizing large amounts and a variety of pesticides for seed crop research and development (primarily corn) near Kaua'i west side communities (i.e., Waimea Valley between Ele'ele and Mana/Pacific Missile Range Facility). The petition letter stated that the local communities might be experiencing adverse and abnormally high number of health issues (e.g., congenital heart defects birth defects, respiratory problems, carcinoid syndrome) related to the pesticides being used on genetically modified organisms (GMO)/crops.

### Public Health Evaluation

To address the communities' concerns, ATSDR obtained and reviewed reports, environmental sampling results, and human health statistical information from various federal, state, and local agencies, and University of Hawai'i. In addition, ATSDR cross-referenced and reviewed the recently finalized report, "*Pesticide Use by Large Agribusinesses on Kaua'i: Findings and Recommendations of the Joint Fact Finding Study Group*" (a.k.a. JFF Study Group report), coordinated by the ACCORD3.0 Network. ATSDR did not locate any additional relevant information or data than those obtained and discussed in the JFF Study Group report.

The information obtained and reviewed provided some sense of the level of pesticides found in the drinking water, surface water, and air in and around the Kaua'i west side communities. In addition, information was available about the types and quantities of regulated pesticides used on the crop fields. No environmental investigation reports located contained information about the amounts of pesticides in community soils. Below, ATSDR evaluates these environmental sampling results and discusses the available information about the occurrence of cancer and birth defects in the Kaua'i west side communities.

When environmental sampling data are evaluated, ATSDR compares the environmental sampling results to human health-based comparison screening values that different agencies have established. If the sampling results show that the level of a particular pesticide is less than an established human health-based comparison screening value, it is unlikely that contaminant would affect human health. If the results are greater than the human health-based comparison screening value, then ATSDR conducts a more in-depth evaluation to determine if human health effects are possible.

### Drinking Water Investigations

Drinking water for Kaua'i west side communities is provided by the Kaua'i Department of Water. As required by the Safe Drinking Water Act, the Kaua'i Department of Water conducts regular monitoring for pesticides regulated by the Safe Drinking Water Act. No pesticides were detected

in the drinking water at levels above detection or health comparison values. In addition, the Kaua'i Department of Water conducted a special round of pesticide sampling on March 9, 2015. That sampling effort used US Environmental Protection Agency (EPA) Method 525, which analyzes for many more pesticides, including chlorpyrifos, not regulated by the Safe Drinking Water Act. No pesticides were detected in the drinking water at levels above detection or health comparison values. Therefore, it is unlikely that residents of Kaua'i west side communities are being exposed to pesticides in their drinking water at levels of health concern.

### Surface Water Investigations

In 2013 and 2014, the Hawai'i Departments of Health and Agriculture collected surface water samples from the main streams and rivers on Kaua'i and the other islands. These investigations found trace amounts of pesticides, but none were found at levels above human health comparison values. Because atrazine was used historically at sugar cane plantations, it was the most widely detected pesticide (highest detection on Kaua'i was 2 parts per billion [ppb], which is below EPA Drinking Water Maximum Contaminant Level [MCL] of 3 ppb). Metolachlor was detected at five surface water locations on Kaua'i but the highest detection was 1.07 ppb (EPA's Life Time Health Advisory is 700 ppb), which is below human health comparison screening values. Therefore, it is unlikely that residents of Kaua'i west side communities are being exposed to pesticides at levels of health concern when they swim in, have contact with, or drink from local streams and rivers.

### Air Investigations

ATSDR and the JFF Study Group were able to only local one report that documented an air investigation at the Waimea Canyon School, Kaua'i. University of Hawai'i researchers conducted air sampling in response to the 2006 and 2008 evacuation incidents at Waimea Canyon School in which teachers and students reported they were sickened (e.g., dizziness, headaches, nausea, respiratory discomfort) by odors and some were seen by medical professionals. The investigation began about two years after the incidents and was conducted to determine (1) potential pesticide exposure and (2) if a locally common plant, stinkweed (*Cleome gynandra*), was producing odorous chemicals that may affect Waimea Canyon Middle School students and staff.

A combination of passive and high-volume air samplers were used during the University of Hawai'i investigation. For over a year, passive air sampling was used to identify chemicals in ambient air around the school and at other locations on Kaua'i for comparison. High volume sampling was conducted at Waimea Canyon Middle School and Hanalei Elementary School to detect chemicals in the ambient air and to determine the quantity of those chemicals. Approximately half of the 29 chemicals produced by stinkweed were detected both in indoor and outdoor air samples collected from the passive and high volume air samplers positioned at Waimea Canyon Middle School and other Kaua'i schools. Trace amounts, below health comparison values, of five pesticides were also detected in both the passive and high volume samples collected at Waimea Canyon Middle School. Two of the five pesticides, dichlorodiphenyltrichloroethanes (DDTs) and benzene hexachlorides (BHCs), were widely used historically for mosquito and other insect control and are no longer in use. Concentrations of chlorpyrifos, metolachlor, and methyl isothiocyanate (a stinkweed associated volatile chemical)

in ambient air at the study sites on Kaua'i were approximately 24-, 650-, and 220-fold below the California subchronic screening levels. DDT was detected below the ATSDR Cancer Risk Evaluation Guide of 10 nanograms per cubic meter.

Because the air samples were collected about two years after the Waimea Canyon School incidents, the results of this study cannot be used to determine what occurred in 2006 and 2008. It is unclear whether the results of this study would represent typical exposures that are occurring in Waimea. If these results do represent the typical exposures occurring in Waimea, the study results indicate that the local population is not being exposed to pesticides at levels of health concern.

ATSDR was not able to determine how much pesticides the Kaua'i west side community members might be inhaling. But various scientific studies have tried to determine how much pesticides local farming populations may be exposed to from pesticide drift. Because the application of pesticides varies considerably (e.g., type being applied, when applications are conducted, length of application time, and geographical location of the application) and is influenced by weather (e.g., wind direction and speed) most of these studies have not been able to determine if pesticides drift beyond crop land boundaries and have exposed the local populations to levels of health concern. In addition, most modern pesticides used on crops tend to degrade fairly rapidly in the environment, which significantly shortens the window to collect environmental samples that could provide an accurate picture.

#### Soil and Dust Investigations

There have not been any systematic soil or dust sampling investigations conducted at or near the Kaua'i west side communities. Most modern pesticides used on crops tend to degrade fairly rapidly in the environment, significantly reducing the possibility that pesticides drifting off of crop lands would accumulate in soil at levels of health concern.

#### Pesticide Usage at Seed Crop Research and Development Areas

According the JFF Study Group report, the seed and Kaua'i Coffee companies used 23 different restricted use pesticides/herbicides (RUPs) between 2013 and July 2015 (approximately 36,240 pounds on 1,841 acres of harvested land). There is no information available about the amount of general use pesticide products used by the Kaua'i seed companies.

The JFF Study Group analysis indicates that the seed and Kaua'i Coffee companies appear to apply roughly 0.8 to 1.7 times the amounts of different RUP herbicides and rough one to three times the amounts of different RUP insecticides per acre than U.S. mainland corn production. The different rate of RUP insecticide applications between Kaua'i and the U.S. mainland are likely due to year-round warm weather and growing season and vulnerability to invasive species.

The largest difference in RUP use on Kaua'i is the insecticides bifenthrin, chlorpyrifos, and zeta-cypermethrin. Chlorpyrifos and zeta-cypermethrin are applied in greater quantities and on more acres than bifenthrin.

The pesticide use statistics discussed above suggest Kaua'i residents might be exposed to more pesticides than U.S. mainland populations. However, it is important to note that pesticide application operations on Kaua'i are not coincidentally applied to the same locations. Because the application of pesticides varies considerably (e.g., type being applied, when applications are conducted, length of application time, and geographical location of the application) and is influenced by weather (e.g., wind direction and speed), environmental air monitoring programs have not been able to accurately define the extent of local population exposures to agricultural pesticides. In addition, most modern pesticides used on crops tend to degrade fairly rapidly in the environment, which significantly shortens the window to collect environmental samples that could provide an accurate picture. Thus, although total volume of pesticides used appears to be greater, the opportunity for residents of Kaua'i west side communities to be exposed to pesticides are probably no different from the U.S. mainland.

### Health Outcome Data

The permanent population on Kaua'i is about 60,000 individuals. Approximately 2,000 people live in Waimea and less than 6,000 people live near seed and Kaua'i Coffee company properties.

The state of Hawai'i has cancer and birth defects registries. The cancer registry is up-to-date but the birth defects registry is only current up to 2005.

In September 2013, HDOH issued a memo that reported the HDOH's analysis of the cancer incidence on Kaua'i. In general, the 2000-2009 cancer incidence on Kaua'i's was found to be similar to or lower than that of the rest of the State of Hawai'i. Within individual census tracts of Kaua'i, cancer incidence was generally lower than or comparable to the corresponding incident rates of the entire state. Only the incidence of melanoma was found to be significantly elevated for the time period of 2000-2004.

Scientific studies have not demonstrated an association between increased incidence of melanoma and pesticide exposures. The primary risk factor for developing melanoma is exposure to the ultraviolet radiation from the sun and tanning beds.

In 2011, HDOH released a report that evaluated the 1986-2005 incidence of birth defects in Hawai'i and counties. In addition, the JFF Study Group was able to obtain 2010-2012 birth defects incidence data for Kaua'i. Due to the small number of infants born with birth defects on Kaua'i, the statistical analysis is not able to determine whether the occurrence of birth defects is occurring more often than what would be expected on the west coast of Kaua'i.

Some of the local physicians have reported an increase in cases of cardiac/circulatory birth (e.g., transposition of the great vessels, pulmonary valve stenosis, hypoplastic left heart syndrome) and gastroschisis birth defects in their practices. HDOH has indicated they will be contacting the local physicians to obtain case information so that case follow-ups can be done.





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